

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**DON BLANKENSHIP,
Plaintiff,**

**Civil Action No.: 2:19-cv-00236
Judge John T. Copenhaver, Jr.**

v.

**HONORABLE ANDREW NAPOLITANO (RET.),
et al.,
Defendants.**

**DEFENDANTS FEINBERG AND BREAKFAST MEDIA'S MOTION FOR RELIEF
UNDER THE D.C. ANTI-SLAPP ACT**

Pursuant to the District of Columbia Anti-SLAPP Act of 2010, D.C. Code § 16-5502(a) (the “Act”), Defendants Andrew Feinberg and Breakfast Media, LLC, by and through undersigned counsel, respectfully move for an order dismissing the Amended Complaint with prejudice. Defendants reserve the right to file a motion seeking an award of costs of litigation hereof, including attorney’s fees, as provided by D.C. Code § 16-5504(a), within fourteen days after entry of judgment in their favor, following a grant of this anti-SLAPP motion.

For the reasons set forth more fully in the accompanying Memorandum in Support Motion For Relief Under the D.C. Anti-SLAPP Act, the statements at issue are protected by the Act as speech “[a]ct[s] in furtherance of the right of advocacy on issues of public interest,” D.C. Code § 16-5502(a), and Plaintiff is unable to carry his burden of demonstrating that he is “likely to succeed on the merits” of his claims for defamation and false light. D.C. Code § 16-5502(b).

It is appropriate under the Federal Rules of Civil Procedure to file this motion concurrent to a Fed. R. Civ. P. 12(b)(6) Motion. *See, e.g., Adelson v. Harris*, 973 F. Supp 2d 467, 471 (S.D.N.Y. 2013) (Defendant filed Rule 12(b)(6) motion concurrent with a motion for relief under

both the D.C. and Nevada Anti-SLAPP Acts, respectively, and a federal court sitting in diversity applied the substantive Anti-SLAPP statute of another state and awarded attorney's fees). The decision to apply another state's Anti-SLAPP law in a federal court sitting in diversity was affirmed in *Adelson v. Harris*, 876 F.3d 413 (2d Cir. 2017).

Accordingly, Defendants request that the Court grant this special motion to dismiss and enter judgment in their favor dismissing the Amended Complaint with prejudice.

Dated: August 16, 2019

Respectfully Submitted,

/s/ Adriana Marshall
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CERTIFICATE OF SERVICE

The undersigned counsel for Defendants Andrew Feinberg and Breakfast Media, LLC hereby certifies that the foregoing “Defendants Feinberg and Breakfast Media LLC's Motion for Relief Under the D.C. Slapp-Act” was served on all counsel of record through the CM/ECF system.

/s/ Adriana Marshall
W. Va. State Bar I.D. #10710